IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.5433 OF 2003

Shri.Dagadu Appa Salunkhe & Ors...Petitioners

Vs.

Shri.Krishna Vithu Salunkhe
and Ors. ...Respondents

....

Mr.Dilip Bodake for Petitioners

....

CORAM : B.H.MARLAPALLE,J.
DATE : APRIL 4,2005

P.C.:

1. Heard Mr.Bodake, the learned counsel for the Petitioners.

2. The record shows that Summons in R.C.S.No. 98 of 2000 were served by the Bailiff on 3.8.2002 The defendant appeared through their advocate before the trial Court on 17.8.2002 and filed an application at Exh.33 praying for time to file written statement. It was granted. Again on the next date i.e. 31.8.2002 another application at Exh.34 filed seeking time which was granted. Again an application at Exh.35 was filed for time to file written statement. This was also granted. Ultimately the Court was forced to pass an order of no written statement and the suit to proceed without written statement on 15.11.2002. The defendants kept quite almost for

more than four months and moved an application at Exh.38 on or about 21.3.2003 for setting aside the order of no written statement and praying for the written statement being taken on record. This was rejected by the trial Court by the impugned order dated 21.3.2003. It is clear that the trial Court had given sufficient opportunities to the defendants to file written statement and after no written statement order was passed the defendants were lethargic and careless in filing the written statement which was presented about four months later. No fault could be found with the view taken by the trial Court in such circumstances and therefore, no interference is called for in this petition. The same is hereby rejected summarily.

3. However, Mr.Bodake submitted that RCS No. 98 of 2002 was decreed and on an application filed by the petitioner exparte decree has been set aside and suit has been restored to file. If that be so, the petitioners are at liberty to apply afresh to the trial Court for leave to file written statement making out a case for exceptional or special circumstances to allow the written statement to be filed. The same application may be considered within four weeks of its filing by the trial Court if it is submitted within two weeks from today.

4. Writ to go forthwith to the trial Court.

[B.H.MARLAPALLE,J.]